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RESOLUTION BY COMMUNITY DEVELOPMENT/  
AN RESOURCES COMMITTEE

RESOLUTION AUTHORIZING THE MAYOR OR HIS  
GNEE, ON BEHALF OF THE CITY OF ATLANTA,  
ENTER INTO A JOINT OPERATING AGREEMENT  
H THE ATLANTA INDEPENDENT SCHOOL SYSTEM  
SS") SETTING FORTH THE TERMS OF AISS'  
THE CITY'S UTILIZATION OF THE MORNING-  
E RECREATION CENTER; AND FOR OTHER  
USES.

AS AMENDED

ADOPTED BY

JAN 19 2010

COUNCIL

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred to \_\_\_\_\_

Committee <i>CD/HR</i>	Committee
Date <i>1/12/10</i>	Date
Chair <i>Jayman Shepard</i>	Chair
Action: <i>(Fav, Adv, Hold (see rev. side))</i>	Action: Fav, Adv, Hold (see rev. side)
Other: <i>NO AMENDED</i>	Other:
Members <i>[Signatures]</i>	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side)	Action: Fav, Adv, Hold (see rev. side)
Other:	Other:
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

- ☐ 2nd
- ☐ 1st & 2nd
- ☐ 3rd
- ☐ Consent
- ☐ V Vote
- ☒ RC Vote

CERTIFIED

JAN 19 2010

*[Signature]*

CERTIFIED  
JAN 17 2010

*[Signature]*  
CLERK

MAYOR'S ACTION

*[Signature]*



**AN AMENDED RESOLUTION BY  
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE**

**A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE, ON BEHALF OF THE CITY OF ATLANTA, TO ENTER INTO A JOINT OPERATING AGREEMENT WITH THE ATLANTA INDEPENDENT SCHOOL SYSTEM ("AISS") SETTING FORTH THE TERMS OF AISS' AND THE CITY'S UTILIZATION OF THE MORNINGSIDE RECREATION CENTER; AND FOR OTHER PURPOSES.**

**WHEREAS**, the Morningside Recreation Center, located at 1053 East Rocksprings Rd, N.E. Atlanta, GA 30306 (the "Center") is owned by the Atlanta Independent School System ("AISS"); and

**WHEREAS**, currently AISS and the City both utilize the Center. The City utilizes the Center for after-school, weekend, holiday, and summer youth programming. AISS utilizes the Center during school hours as an extension of the Morningside Elementary School; and

**WHEREAS**, despite AISS' and the City's joint use of the Center, no written agreement regarding such use has been executed; and


**WHEREAS**, it is in the City's best interest to continue utilizing the Center, and to have the terms of said use set forth in an executed agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:**

**SECTION 1.** The Mayor or his designee, on behalf of the City, is hereby authorized to enter into a Joint Operating Agreement with AISS (the "Agreement") that is substantively similar to the agreement attached hereto as Exhibit "A". The Agreement shall set forth the conditions of the City's and AISS' shared use of the Morningside Recreation Center. The City shall owe no rent to AISS for use of the Center, but shall contribute toward certain costs of operating the Center as described in the Agreement, including without limitation the cost of the City's utility use. The Agreement shall be for a term of ten (10) years, with an option for additional terms of three (3) years upon the mutual consent of the Parties.

**SECTION 2.** The City Attorney is hereby directed to prepare said Agreement for execution by the Mayor, to be approved as to form by the City Attorney or her/his designee.

**SECTION 3.** This Agreement shall not become binding on the City of Atlanta, and the City of Atlanta shall incur no liability upon the same until such Agreement has been



approved by the City Attorney or her/his designee as to form, executed by the Mayor,  
attested to by the Municipal Clerk and delivered to AISS.

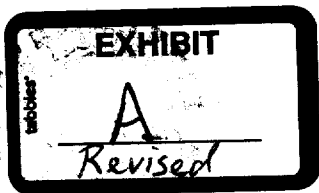


A true copy

Deputy Clerk

ADOPTED as amended by the Council  
APPROVED by Mayor Kasim Reed

JAN 19, 2010  
JAN 27, 2010



## JOINT OPERATING AGREEMENT

### MORNINGSIDE ELEMENTARY SCHOOL/ MORNINGSIDE RECREATION CENTER

THIS JOINT OPERATING AGREEMENT ("Agreement") for the Morningside Recreation Center is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between **THE ATLANTA INDEPENDENT SCHOOL SYSTEM** (the "AISS") and **THE CITY OF ATLANTA, GEORGIA** (the "City").

### RECITALS

WHEREAS, title to the property described on **Exhibit "A"** attached hereto (the "Property") is currently held in the name of the Atlanta Independent School System; and

WHEREAS, there previously existed on a portion of the Property the Existing Improvements, as hereinafter defined; and

WHEREAS, the AISS desired to make certain renovations to the Existing Improvements and also desired to construct the new Expansion Improvements, as herein defined; and

WHEREAS, it was anticipated that the total cost of construction of both the renovations to the Existing Improvements and the new Expansion Improvements should be equal to or greater than One Million Dollars (\$1,000,000.00); and

WHEREAS, the City had previously budgeted One Hundred Thousand Dollars (\$100,000.00) for repairs and renovations to the Existing Improvements and, as such, had agreed to contribute One Hundred Thousand Dollars (\$100,000.00) toward said initial total of One Million Dollars (\$1,000,000.00) of construction costs, and the AISS had agreed to pay for said total cost of construction over said One Hundred Thousand Dollar (\$100,000.00) contribution; and


WHEREAS, the Existing Improvements had sustained long existing damage that was deemed unfeasible to repair; and

WHEREAS, the AISS and the City deemed that the more feasible approach was to demolish the Existing Improvements; and

WHEREAS, the Facility was constructed in lieu of the Existing Improvements and Expansion Improvements; and

WHEREAS, the total cost of construction of the Facility was equal to or greater than One Million Three Hundred Eighty Thousand Dollars (\$1,380,000); and

WHEREAS, the AISS continued to agree to contribute all costs above the City's One Hundred Thousand Dollar (\$100,000) contribution; and



WHEREAS, the City, in consideration of the AISS's agreement to enter into this Agreement, paid AISS One Hundred Thousand Dollars (\$100,000) in January 2000, pursuant to Resolution number 99-R-1336, and conveyed title to the Premises, as hereinafter defined, to the AISS; and

WHEREAS, the City and the AISS desire to set forth certain rights and responsibilities with respect to the Premises, as hereinafter defined, and to provide for certain other agreements, all as set forth below; and

WHEREAS, by Resolution approved by the City Council of Atlanta on the \_\_\_\_ day of \_\_\_\_, 2003, and approved by the Mayor on the \_\_\_\_ day of \_\_\_\_, 2003, the Mayor is authorized on behalf of the City to enter into this Joint Operating Agreement, a true copy of which Resolution is attached hereto as **Exhibit "B"** and made a part hereof by reference.

WHEREAS, at its August 9, 1999 legislative meeting, the Board of Education of the City of Atlanta authorized the AISS to enter into this Joint Operating Agreement with the City of Atlanta, and a true copy of said authorization is attached hereto as **Exhibit "C"** and made a part hereof by reference.

NOW, THEREFORE, for and in consideration of the covenants, representations, warranties and agreement set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do agree as follows:


## ARTICLE I

### Definitions and Use of Facility's Rooms

Unless otherwise expressly provided herein, when used in this Agreement, and when capitalized in this Agreement as they are in this Article I, the following words, phrases and terms shall mean and have reference to the definition set forth below:

#### Section 1.1 General Definitions

"AISS' Hours of Use" means the time during which the AISS shall have exclusive use of the Facility as described in section 4.1.1 below, said times being specifically all times not designated as City's Hours Of Use. In the event the AISS should ever change its hours of school operations on a system-wide basis (not including the days on which school is regularly held or the seasons during which school is held), AISS shall provide the City with at least sixty days notice prior to the implementation of the change, and said AISS' Hours of Use shall automatically, without need for amendment hereto, be adjusted to include such revised system-wide hours of school operations. In the event AISS should ever change the days on which school is regularly held or the seasons during which school is held, AISS will notify the City and the parties agree to negotiate, in good faith, an amended agreement.



"Broom Clean" means that all dry debris and trash are removed from the building, all floors are swept, all carpets are vacuumed, and all restrooms are cleaned.

"City's Hours of Use" means the time during which the City shall have exclusive use of the Facility as described in section 4.1.1 below, said times being specifically: During the Summer, Monday through Sunday- 7:00 a.m. through 9:00 p.m.; During the School Year, Monday through Friday- 3:01 p.m. through 6:30 p.m. for the Facility's upper floor, and 3:01 p.m. through 8:00 p.m. for the remainder of the Premises, including but not limited to the Gymnasium; During the School Year, Saturday and Sunday- 10:00 a.m. through 6:00 p.m. for the Gymnasium only; AISS vacation days during the school year, as listed in the Official Atlanta Public Schools Calendar, including but not limited to the Thanksgiving break, winter break, and spring break- 10:00 a.m. through 9:00 p.m. In addition, the City's Hours of Use shall include use of the Playing Fields on Monday through Friday throughout the year, from 3:00 p.m. to 7:00 p.m. It shall include use of the Playing Fields from 3:00 p.m. to 10:00 p.m. on any day that a tournament is being held on the Fields. However, AISS will have the right to utilize the field space for portable classrooms if needed for its instructional program with 90 days notice.

Lastly, the City shall have the right to use and rent the Facility from 6:00 p.m. Friday nights until 3:00 a.m. Saturday mornings, and from 6:00 p.m. Saturday nights until 3:00 a.m. Sunday mornings throughout the year.

"Commissioner" means the Commissioner of the City of Atlanta Department of Parks, Recreation and Cultural Affairs, or their designee.

"Exclusive Space" means any and all areas in the Facility where either the City or the AISS has the exclusive right to utilize the area at all times, even during the City's Hours of Use and the AISS' Hours of Use.

"Existing Improvements" means the approximately 6500 square foot recreation building that contained administrative offices, a gymnasium, game room, male and female rest rooms and ancillary facilities, that was originally located on the Property, but has since been demolished.


"Expansion Improvements" means the approximately 6,150 square foot addition to the Existing Improvements that was supposed to be constructed by the AISS on the Property, but that was never constructed.

"Facility" means the approximately 10,500 square foot building constructed by the AISS and currently existing on the Property.

"Hours of Use" means the City's Hours of Use and/or the AISS' Hours of Use, as determined by the context in which the term arises.

"Party" or "Parties" means the City of Atlanta and/or the AISS, as determined by the context in which the term arises.

"Premises," means, collectively, the Property and the Improvements thereon.



“Principal” means the principal of the Morningside Elementary School.

“School Year” means the period of time beginning two weeks prior to the regularly scheduled commencement of classes of each year, and ending one week after the regularly scheduled ending of classes each year, provided that, in the event that this span of time is longer than forty-five weeks, the definition of “School Year shall be modified, as agreed upon by Principal, AISS Director of Facilities, and the Commissioner by February 1 of the applicable school year, to provide the City with at least seven weeks of Summer Hours of Use.

“Shared Space” means any and all areas in the Facility where neither the City nor the AISS has the exclusive right to utilize the area at all times, and the time during which either Party has the right to utilize the space shall be determined as set forth in section 4.1.1 below.

“Special Use Permit” means the AISS form titled “Permit For Use of School Buildings For Non-School Functions/Activities”.

“Summer” means the period of time in the year outside of the School Year, as defined above, but in no event shall the period of time be less than seven weeks.

Section 1.2 Facility Rooms and Uses Therefore. In addition to providing definitions, the list below states all of the rooms in the Facility, and other areas of potential use on the Premises, and sets forth each Party’s rights with regard to utilization of the rooms and areas.


“AISS Administrative Office” means that certain office located within the Facility, the location of which is shown on Exhibit “A” attached hereto (hereinafter Exhibit “A”), that shall be the Exclusive Space of AISS.

“AISS Storage Areas” means those certain storage areas located within the Facility, the locations of which are shown on Exhibit “A”, that shall be the Exclusive Space of AISS.

“Arts and Crafts Room” means that certain room located within the Facility, the location of which is shown on Exhibit “A”, that shall be Shared Space, and which shall be used as an arts and crafts room only, and which shall be and remain arranged as an arts and crafts classroom at all times.

“City Administrative Office” means that certain office located within the Facility, the location of which is shown on Exhibit “A” , that shall be the Exclusive Space of the City.

“Community Room” means that certain room located within the Facility, the location of which is shown on Exhibit “A”, that shall be the Exclusive Space of the City. However, this space may be used as shared space in the future with ninety (90) days notice to the City if needed for the AISS instructional program, in which case AISS shall provide the City with another secured location in the Facility with adequate space for the City to locate and operate its computers. Said space must be pre-approved by the City before becoming the City’s Exclusive Space, and such approval shall not be unreasonably denied or delayed.

 "Gymnasium" means that certain room located within the Facility, the location of which is shown on Exhibit "A", that shall be Shared Space.

"Kitchen" means the kitchen located within the Facility, the location of which is shown on Exhibit "A", that at the time of executing this Agreement includes two refrigerators, a dishwasher, and a microwave, all of which belong to the City. The Kitchen shall be the Exclusive Space of the City.

"Large Hallway- Downstairs" means the large hallway located in the downstairs portion of the Facility, the location of which is shown on Exhibit "A", and which shall be Shared Space used for miscellaneous activities. The City may house small, portable games in that area.

"Large Hallway- Upstairs" means the large hallway located in the upstairs portion of the Facility, the location of which is shown on Exhibit "A", and which shall be Shared Space utilized for miscellaneous activities. In addition, a portion of the Large Hallway- Upstairs includes a storage area constructed by the City, and the storage area shall be the Exclusive Space of the City.

"Meeting Room" means that certain room located within the Facility, the location of which is shown on Exhibit "A", which shall be Exclusive Space of AISS.

"Playing Fields" means the ball fields located on the Premises outside of the Facility, including but not limited to the concrete pad and the four basket ball courts thereon, which shall be Shared Space.

"Potential City Storage Area" means that certain area located outside of the Premises that the City may use as Exclusive Space, to create a storage area for athletic equipment and uniforms. Said Potential City Storage Area must be approved by the Principal. The costs of building such Potential City Storage Area shall be borne solely by the City.

## **ARTICLE II**

### **Payment**

Payment of City Contribution. AISS acknowledges that it received the City's payment of One Hundred Thousand Dollars (\$100,000.00) in January 2000, and that AISS applied said payment toward the cost of construction of the Facility.





## ARTICLE III

### Term

This Agreement shall be for a term of ten (10) years, commencing on the first day of July, 2004. The Parties anticipate that the shared use of the facility will be indefinite, based on the shared cost. Accordingly, this Agreement may be extended for additional terms of three (3) years each, upon mutual agreement between the Parties hereto and upon adoption of appropriate authorizing legislation by each. The Parties agree to negotiate in good faith for an extension of this Agreement prior to the expiration hereof.

## ARTICLE IV

### Use of Improvements

#### Section 4.1. Exclusive vs. Shared Space.

- 4.1.1 The City and the AISS acknowledge and agree that, with the exception of those areas of the Facility that are listed in this paragraph as being Exclusive Space, the Facility shall be deemed Shared Space. Each Party's rights regarding use of the Shared Space is set forth in section 1.2 above. The AISS shall have the exclusive right to use the Shared Space during the AISS' Hours of Use for the duration of the Term, and the City shall have the exclusive right to use the Shared Space during the City's Hours of Use during the Term. In the event that the City wishes to use a portion or all of the Facility during times that are not the City's Hours of Use, the City shall obtain prior written approval from the Principal. Obtaining written approval shall include, but not be limited to, the City's need for additional space approximately twice a month for senior citizen programming. In the event that the City wishes to use the Playing Fields during times that are not the City's Hours of Use, the City shall obtain a Special Use Permit from the Principal.
- 4.1.2 Section 4.1.1 notwithstanding, the AISS and the City acknowledge and agree that due to the size and configuration of the Facility, there may be times that different areas of the Facility can be utilized simultaneously by the Parties hereto without imposing an undue burden or otherwise interfering with the Party holding exclusive use rights during such time. Accordingly, each Party agrees that they shall act in good faith in processing requests by the other for use of the Facility during their Hours of Use and, to the extent such requested use would not materially interfere with the intended use of the Facility by the Party receiving the request, shall grant such request. As to those hours falling outside of both Parties' respective Hours of Use, each Party shall have a right to use the Facility; provided, however, in the event both Parties desire to use the Facility during any such hours, the Parties agree to negotiate and cooperate in good faith in an effort to prioritize such usage based upon the overall benefits to the community at large which might reasonably be expected as a result of such respective usage.

- 4.1.3 In relation to each Party's agreement to cooperate in good faith toward the shared use of the Facility, each Party agrees to provide the other on at least a bi-annual basis on or before August 15<sup>th</sup> and November 15<sup>th</sup> of each year, a generalized schedule indicating such Party's times of use of the Facility as well as any special events of which the Party is aware at that time which fall outside of the Party's normal Hours of Use. In addition to the schedule exchange occurring each August, the Parties shall provide each other with a tentative schedule of use on or before June 15<sup>th</sup>. Furthermore, each Party acknowledges and agrees that they shall cooperate with each other in generating and updating administrative guidelines addressing the day-to-day usage of the Facility by the Parties.
- 4.1.4 Each Party acknowledges and agrees that all proposed usage of the Shared Space will be supervised at all times by the party authorizing the use. There shall not be any unsupervised activities in the Facility at any time.
- 4.1.5 Each Party hereby grants and conveys to the other, for the benefit of its employees, agents, students and invitees, a non-exclusive easement of access, ingress, egress and use for the term of this Agreement over the Property and in and to the Facility for the purposes set out herein.
- 4.1.6 Each Party acknowledges and agrees that following its Hours of Use of the Facility, it shall store any and all recreational and athletic equipment owned by it within areas designated for its exclusive use.
- 4.1.7 The Parties acknowledge that the City is not required to provide janitorial services after its Hours of Use Monday through Friday during the School Year. In addition, there may be other times when one of the Parties utilizes the Premises, or some portion thereof, and is not required to provide janitorial services at the conclusion of its use. Without waiving the requirements of section 6.5.2 below, both Parties agree that, at the conclusion of their use of the Premises, or any portion thereof, they shall leave the Premises in a broom clean condition, though other than the times set forth in section 6.5.2 and Article XI below, they need not provide janitorial services.
- 4.1.8 The City shall have the right to locate its computers in the Community Room, as well as in any other secured location pre-approved in writing by the AISS. AISS, however, shall have no liability for any damage to or loss of the City's computers except to the extent caused by the negligence and/or intentional misconduct of AISS, its officials, employees and/or agents, but in no event shall this clause waive any immunity afforded to AISS by law.
- 4.1.9 The Parties recognize that each will occasionally have special events that require use of the Premises or hours of use that are not contemplated by this Agreement. Both Parties will work cooperatively and in good faith to schedule such events.

- 4.1.10 City site administrators and staff will meet with Morningside's administration and teachers to develop a plan for operation to address such issues as use of classroom space, plan for cleaning, etc. and to implement a process/procedure to resolve shared usage concerns. These meetings shall occur no later than May 1<sup>st</sup> and December 1<sup>st</sup> of each year of the term of this Agreement.

Section 4.2 Compliance with Laws. The AISS and the City shall take such reasonable measures as are necessary to assure that the Facility is maintained, improved, managed, operated, and utilized in material compliance with all applicable laws, ordinances, rules, orders and regulations.

## **ARTICLE V**

### **Alterations to the Improvements**

Section 5.1 The City acknowledges and agrees that the Facility shall be titled in and owned by the AISS at all times.

Section 5.2 AISS shall have the right at any time and from time to time during the term of this Agreement to make alterations and/or additions to the Facility, and to temporarily close all or any portion of the Facility to facilitate the construction of such alterations and/or additions, provided that: 1) AISS provides the Commissioner with no less than two weeks advance written notice of work being performed on or in the Facility that may impact the City's use of the Facility; 2) the work being performed on or in the Facility does not cause the City to have to relocate some or all of its Facility activities for more than one week; and 3) such alterations and/or additions do not materially adversely affect the overall quality or functionality of, or the City's ability to utilize the Facility. In performing such alterations and/or additions, the AISS will use reasonable efforts to minimize any interference with the City's programs being conducted at the Facility. In the event that the work being performed causes the City to have to relocate some or all of its Facility activities for more than one week, AISS shall submit its alteration and/or addition construction plans to the City for review and approval. AISS and the City shall work cooperatively to find a manner and time of performing the construction that is acceptable to both Parties. AISS shall not begin said construction until after the Commissioner approves said work in writing.

Section 5.3 Each Party may, at its option and at its sole cost and expense, at any time and from time to time, may install and remove from the Facility trade fixtures, equipment, furniture and furnishings owned by it; provided, however, the Party so removing said items must repair any and all damage to the Facility occasioned thereby.

## **ARTICLE VI**

### **Utilities and Janitorial Services**

Section 6.1. Each Party acknowledges and agrees that it shall limit its usage of all utility services to that which is reasonably necessary to conduct its activities within the Facility.

Section 6.2. The AISS agrees to provide water, gas, electric and sewer services to the Facility, subject to the City's reimbursement of the AISS for its pro rata share of the cost of such services as set forth below in this Section 6.

Section 6.3. The City's pro rata share of the cost of providing the water, gas, electric, and sewer services to the Premises shall be 35% of the total cost during the School Year and 80% of the total cost during the Summer of each year. In the event that the AISS utilizes the Facility for summer school, pursuant to Section 4.1.2 above, the AISS' pro rata share of the cost of providing the water, gas, electric, and sewer services to the Premises during any such Summer shall be 35% rather than 20%.

Section 6.4. The City agrees that it shall pay uncontested invoices for its pro rata share of such utility service costs within thirty (30) days of the date it receives the bill for said services. The AISS shall be entitled to bill the City for the City's pro rata share of such costs, in arrears, but no more frequently than quarterly. All AISS invoices shall provide the City with evidence of the actual cost of such services, and will include supporting documentation, including any supporting documentation reasonably requested by the Commissioner. Where the CITY questions or challenges any invoice, the CITY shall submit payment to the AISS within thirty (30) days after the AISS and the CITY reach agreement regarding the amount owed, said agreement to be memorialized by letter from the CITY to the AISS.

Section 6.5. Janitorial Services. In addition to the above, janitorial service for the Facility shall be provided by the Parties as follows:

- 6.5.1 The AISS, exclusively, will provide year round, at its sole cost and expense, the janitorial services for the AISS' Exclusive Space. The City, exclusively, will provide year round, at its sole cost and expense, the janitorial services for the City's Exclusive Space. Janitorial Services for the Exclusive Space shall be provided at a minimum of once per week, and the Exclusive Space shall be in a Broom Clean condition at the conclusion of each Party's Hours of Use.
- 6.5.2 On Monday through Friday during the School Year, the AISS shall provide, at its sole cost and expense, janitorial services (including providing general supplies and dumpster services) for the Shared Space, such that the Shared Space is left in a Broom Clean condition prior to the commencement of the City's Hours of Use.
- 6.5.3 On Saturdays and Sundays during the School Year, the City shall provide, at its sole cost and expense, janitorial services (including providing general supplies and dumpster services) for the Shared Space, such that the Shared Space is left in a Broom Clean condition prior to the commencement of the AISS' Hours of Use.
- 6.5.4 During the Summer, the City shall provide, at its sole cost and expense, janitorial services (including providing general supplies and dumpster services) for the Shared Space.



## ARTICLE VII

### Repairs and Maintenance


Section 7.1 Condition of Premises. The AISS acknowledges and agrees that it shall, throughout the Term of this Agreement, maintain the Premises in a good, tenantable and safe condition and shall promptly make any and all repairs and replacements required to maintain such condition. This duty shall include, but not be limited to performing routine upkeep and maintenance of all of the outdoor areas of the Premises so that they remain in a safe and attractive condition.

Section 7.2 Repairs and Maintenance. The City shall have the obligation of advising the AISS in a timely manner of the need for any repair, maintenance, or restoration that comes to its attention. The City shall notify the AISS of a need for repair or restoration by contacting the SRT Manager at (404) 802-3758 via telephone.

7.2.1 In the event that a problem needing repair creates a safety or health hazard, the repair shall be deemed an emergency, and AISS shall use a good faith effort to repair the problem within three (3) hours of receiving notice thereof if it has the financial resources available to do so, as determined by the Facilities Maintenance Director at her/his sole discretion. Where the AISS is unable to eliminate the hazard, either because it cannot make the repair for financial reasons, or because it cannot find an immediate solution to removing the hazard, the AISS shall close the Facility until the hazard to safety and/or health is eliminated. The Parties shall then proceed as set forth in section 7.2.2 below.

7.2.2 In the event that a problem needing repair causes the City to be unable to use the Premises as previously planned, the AISS shall make the repair contingent upon having the financial resources available to do so, where such availability shall be determined by the Facilities Maintenance Manager—at her/his sole discretion. The City may also repair said problem after consulting with and receiving approval from the Facilities Maintenance Manager of the Morningside Elementary School, or her/his designee. Where the AISS is not able to make the repair, and the City is not able and/or willing to make the repair, the AISS or the City shall have the right to terminate this Agreement by written notice to the other, and the termination shall be at no cost to either of the Parties. In addition, the AISS shall have the right to close the Facility, in which case neither Party shall have responsibility or liability with respect to the needed repair.

Section 7.3 Cost of Maintenance and Repairs. All Premises maintenance costs shall be paid by AISS. The cost of repairs to the Premises shall be borne by the Parties as follows: In the event the subject repair is necessitated due to normal wear and tear, the cost thereof shall be paid by the AISS. In the event the subject repair is necessitated due to the negligence or intentional acts of either of the Parties or their agents, employees, students or invitees, then, such Party shall be solely responsible for the cost of making such repair.



Section 7.4 Payment of Repair Costs. The AISS shall send an invoice to the Commissioner for any repair costs for which the City is responsible, pursuant to Section 7.3 above. All invoices will include supporting documentation, including any supporting documentation reasonably requested by the Commissioner. The CITY will pay any uncontested invoices in full within thirty (30) days of receipt. Where the CITY questions or challenges any invoice, the CITY shall submit payment to the AISS within thirty (30) days after the AISS and the CITY reach agreement regarding the amount owed, said agreement to be memorialized by letter from the CITY to the AISS. In the event that the City and the AISS are unable to reach agreement regarding the amount owed, they shall participate in binding arbitration to resolve the matter, as described in Section 12.6 below.


## **ARTICLE VIII**

### **Insurance**

Section 8.1 "All Risk" Property Insurance. Throughout the Term of this Agreement, the AISS shall carry and maintain a policy of "all risk" property insurance (naming the City as loss payee) covering the Facility against loss or damage by fire, collapse and other risks now or hereafter customarily embraced by an "all risk" policy in an amount not less than one hundred percent (100%) of the full replacement value of the Facility, less and except the foundation thereof and less and except a commercially reasonable deductible.

Section 8.2 Evidence of insurance. If requested by the City, the AISS shall deliver to the City certificates of insurance evidencing the insurance required hereunder. The AISS shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and the AISS shall deliver to the City such renewal certificates at least thirty (30) days before the expiration of any existing policy, if requested by the City.

Section 8.3 Waiver of Claims. All policies covering real or personal property which the City or the AISS obtains affecting the Premises shall include a clause or endorsement denying the insurer any rights of subrogation against the other such Party to the extent rights have been waived by the insured before the occurrence of injury or loss, if same is obtainable without unreasonable cost. The City and the AISS each hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under the releasing Party by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other Party, or anyone for whom such Party may be responsible; provided, however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at that time and in any event only with respect to loss or damage occurring during such time as the releasing Party's applicable policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasing Party to recover thereunder and then only to the extent of the insurance proceeds payable under such policies.



Section 8.4 Cost of Insurance. The AISS agrees to be solely responsible for the cost of the all risk policy insurance required under this Article VIII.

## **ARTICLE IX**

### **Access to Premises**

Upon the execution of this Agreement, the City will be provided key entry and security access to the Premises, including but not limited to the Facility. The AISS shall not change or re-key any locks to the Premises, or any portion thereof, including but not limited to the Facility, nor change any Premises security codes, without immediately providing the City with new and functional keys and/or security codes so that there is no lapse in the City's ability to enter the Premises, or any portion thereof, without assistance. The City shall not change or re-key any locks to the Premises, or any portion thereof, including but not limited to the Facility, nor change any security codes, nor do anything else to limit the AISS' access to the Premises or any portion thereof. This Article IX shall not apply to those locks or security codes providing access to Exclusive Space only.

## **ARTICLE X**

### **Casualty**

In the event the Facility is damaged by fire or other casualty in any material respect during the term of the Agreement, the AISS shall cause the damages to be repaired within a reasonable period of time, subject to delays which may arise by reason of adjustment of loss under insurance policies, and for unavoidable delays. Notwithstanding the foregoing, the AISS's obligation to perform such repairs and restoration work shall, at all times, be limited to the amount of insurance proceeds actually received as a result of such casualty event.

## **ARTICLE XI**

### **Assignment and Subletting.**

Each Party acknowledges and agrees that it shall not assign or sublet its rights of use in and to the Facility to any person or entity without the prior written consent of the other Party to this Agreement. Section 6.5 notwithstanding, in the event that either Party assigns or sublets its right of use in and to the Facility, the assigning or subletting Party shall be responsible for providing, at its sole cost and expense, janitorial services (including providing general supplies and dumpster services) for the Facility such that the Facility is left in a Broom Clean condition, prior to the commencement of the other Party's Hours of Use.

The restriction on assignment and subletting shall not in any way be deemed to restrict or limit each Party's right to conduct activities within the Facility in accordance with the terms of this Agreement, or to allow third parties to utilize the Facility in accordance with the terms of section 4.1.4 above. Furthermore, the AISS acknowledges and agrees that, pursuant to the terms of section 4.1.4 above, the City shall have the right, from time to time, to rent out the Facility at

all times that the Premises are not in use by the AISS and that the City shall be in entitled to retain all revenues generated therefrom. The City acknowledges and agrees that, pursuant to the terms of section 4.1.4 above, the AISS shall have the right, from time to time, to rent out the Facility at all times that the Premises are not in use by the City and that the AISS shall be in entitled to retain all revenues generated therefrom.

Where one of the Parties allows the Facility to be utilized or rented by a third party consistent with the terms of this Agreement, that Party will be responsible for the repair of any property damage (or replacement of property if reasonably necessary) occurring during said use or rental of the Facility to the extent that the subject repair or replacement is necessitated due to the negligence or intentional misconduct of the Party authorizing the use, or the third party that used or rented the Facility. Where the City is responsible for the repair pursuant to this paragraph, and fails to replace or repair such damage, AISS shall have the right to make the repairs. AISS shall invoice the City for the reasonable repair costs, and the City shall pay the same pursuant to the procedure set forth in Section 7.4 below.

## **ARTICLE XII**

### **Events of Default and Remedies**

Section 12.1. In the event that either Party should fail to perform any of its obligations hereunder, or shall fail to perform its obligations in the manner required hereunder, the non-defaulting Party shall provide written notice to the defaulting Party specifying the precise failure and the corrective action required. The non-defaulting Party shall state the number of days that the defaulting Party shall have to implement the corrective action, and shall make such determination based upon the seriousness of the matter, the safety implications of the matter, and the amount of time that it would reasonably take to implement that type of correction. The non-defaulting Party shall be reasonable with regard to granting extensions of time if the defaulting Party indicates that it needs additional time and is making a good faith effort to implement the corrective action.

Section 12.2. The defaulting Party shall use its best efforts to implement the corrective action within the time set forth by the non-defaulting Party in its written notice. In the event that the defaulting Party needs additional time to implement the corrective action, it shall request an extension of time for a defined time period. In no event shall the extension of time be greater than thirty (30) days from the date that the defaulting Party received the non-defaulting Party's written notice.

Section 12.3. In the event that the corrective action is not implemented and completed by the time set forth in the non-defaulting Party's written notice, or by the time set forth in a written extension of time, if applicable, the non-defaulting Party shall have the right to perform such corrective action on behalf of the defaulting Party, in which case all documented and reasonable costs and expenses so incurred shall be reimbursed to the non-defaulting Party by the defaulting Party. The non-defaulting Party shall submit invoices for the costs and expenses to the defaulting



Party. All invoices will include supporting documentation, including any supporting documentation reasonably requested by the defaulting Party. The defaulting Party will pay any uncontested invoices in full within thirty (30) days of receipt. Where the defaulting Party questions or challenges any invoice, the defaulting Party shall submit payment to the non-defaulting Party within thirty (30) days after the AISS and the CITY reach agreement regarding the amount owed, said agreement to be memorialized in writing.

Section 12.4. In addition to the foregoing right to perform on behalf of the defaulting Party, each Party shall have a right of specific performance to enforce the full performance and compliance of the other Party under this Agreement.

Section 12.5. The City and the AISS acknowledge and agree that their sole and exclusive remedies for a default by the other Party shall be aforesaid right to perform on behalf of the other Party, as set forth above, and the right of specific performance.

### **ARTICLE XIII**

#### **Entire Agreement**

This Agreement, including any exhibits hereto, constitutes the entire agreement between the Parties hereto, and there are no other agreements or understandings, either oral or written, between them concerning the subject matter of this Agreement other than those herein set forth. No amendment, change, waiver or modification to this Agreement shall be binding upon the Parties hereto, unless in writing and signed by the Parties hereto.

### **ARTICLE XIV**

#### **Headings**

The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may not be considered as interpreting the provisions of this Agreement.

### **ARTICLE XV**

#### **Binding Effect**

All of the provisions of this Agreement shall be binding upon and inure to the benefit of the representatives, heirs, successors, and assigns of the Parties hereto.

### **ARTICLE XVI**

#### **Time of Essence**

Time is of the essence of this Agreement.



## **ARTICLE XVII**

### **Unenforceable or Inapplicable Provisions**

If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

## **ARTICLE XVIII**

### **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original and shall be construed together and shall constitute one instrument. In the event the Parties hereto execute and deliver this Agreement by signing and delivery by facsimile transmission, such signing and delivery of facsimile signatures shall be effective and shall have the same effect as if original signatures were delivered and each such Party signing and delivering by facsimile transmission shall immediately thereafter provide original signed copies to the other Parties hereto.

## **ARTICLE XIX**

### **Construction**

The Parties acknowledge that each Party and its counsel have reviewed and approved this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

## **ARTICLE XX**

### **Third Parties**

Except as otherwise specifically provided for to the contrary herein, the terms of this Agreement are for the sole benefit of the Parties hereto and their successors and assigns and shall not confer any rights in any other party and no other party shall be entitled to rely thereon.

## **ARTICLE XXI**

### **Notices**

Notices to be effective must be in writing and either delivered personally, sent by overnight express, courier, telecopier, other expedited mail service or by certified mail, postage prepaid, addressed to the appropriate Party at its address below. Notices are effective when

delivered personally or telecopied, or five (5) business days after being sent by other means authorized above.

If to the City: Department of Parks, Recreation and Cultural Affairs  
ATTENTION: Commissioner  
Suite 800, City Hall East  
675 Ponce de Leon Avenue, N.E.  
Atlanta, Georgia 30308

If to the AISS: The Atlanta Independent School System  
ATTENTION: Superintendent  
130 Trinity Avenue  
Atlanta, Georgia 30303

with a copy to: The Atlanta Independent School System  
Law Department, General Counsel  
210 Pryor Street  
Atlanta, Georgia 30303

The Atlanta Independent School System  
Facilities Services, Executive Director  
1631 La France Street  
Atlanta, Georgia 30307  
Tel: (404) 827-8407  
Fax: (404) 827-8409

Principal, The Morningside Elementary School  
1053 E. Rock Springs Road  
Atlanta, Georgia 30306

Any Party, may from time to time, change the address to which notices shall be sent by like notice given, except that no Party may change its address to other than a street address. Any notice given that does not conform to this paragraph shall be effective only upon receipt.

## **ARTICLE XXII**

### **Governing Law**

The interpretation, enforcement and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.



## **ARTICLE XXIII**

### **Relationship of the Parties**

Nothing set forth in this Agreement shall be construed as creating a partnership, joint venture, franchise, or agency relationship between the Parties hereto, and neither Party shall be generally liable for the debts or obligations of the other Party.

## **ARTICLE XXIV**

### **Power and Authority**

The undersigned representative of the AISS and the Mayor represent and warrant to the other that they have all requisite power and authority to enter into this Agreement and convey the rights granted hereunder.

\*\*\*\*\* Signature Page To Follow \*\*\*\*\*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date above written.

ATTEST:

CITY OF ATLANTA:

\_\_\_\_\_  
Municipal Clerk

\_\_\_\_\_  
Mayor (Seal)

APPROVED:

APPROVED:

\_\_\_\_\_  
Commissioner, Department of Parks,  
Recreation and Cultural Affairs

\_\_\_\_\_  
Commissioner,  
Department of Procurement

APPROVED AS TO FORM:

\_\_\_\_\_  
Senior Assistant City Attorney

Signed, sealed and delivered in  
the presence of:

THE ATLANTA INDEPENDENT SCHOOL SYSTEM

\_\_\_\_\_  
Unofficial Witness

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

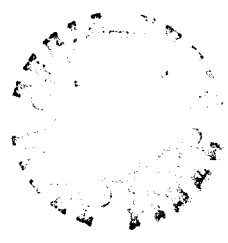
[SEAL]

My Commission Expires: \_\_\_\_\_

Approved as to form by:

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_



## EXHIBIT D

City of Atlanta Parks & Recreation Programs

**To Be Provided**

RCS# 17  
1/19/10  
1:54 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

10-R-0145

ADOPT EXCEPT

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
B Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I